

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

|                                      |   |                           |
|--------------------------------------|---|---------------------------|
| In the matter of                     | ) |                           |
|                                      | ) |                           |
| DIRECT DIAL AUDIO CORPORATION        | ) | FOIA Control No. 2004-577 |
|                                      | ) |                           |
| On Request for Inspection of Records | ) |                           |

**MEMORANDUM OPINION AND ORDER**

**Adopted: June 10, 2005**

**Released: June 15, 2005**

By the Commission:

1. The Commission has before it an application for review filed by David Walker of Direct Dial Audio Corporation (Direct Dial) of the decision of the Enforcement Bureau (EB) responding to Direct Dial's Freedom of Information Act (FOIA) request. For the reasons stated below, we deny the application for review.

2. Direct Dial filed a FOIA request that did not seek any records, but instead was comprised of a series of questions concerning alleged violations of the Communications Act of 1934, as amended, by SBC Communications, Inc. (SBC).<sup>1</sup> Although EB was not required by the FOIA to answer such questions,<sup>2</sup> EB attempted to respond to Direct Dial's questions, and provided Direct Dial with a copy of a previously released EB order dismissing Direct Dial's documents containing allegations about SBC.<sup>3</sup> Direct Dial sought review of EB's response.<sup>4</sup>

3. The application for review is without merit. The application does not assert that EB failed to produce any records, or otherwise acted in a manner inconsistent with the requirements of the FOIA or our implementing regulations.<sup>5</sup> Rather, Direct Dial asks that it be allowed to file a complaint for damages against SBC.<sup>6</sup> Such a request is outside the scope of the FOIA. Moreover, Direct Dial failed to pursue its possible remedies in this regard in a timely manner. Direct Dial's filings concerning SBC were dismissed

<sup>1</sup> Letter from David Walker, President, Direct Dial, to "Director of FOIA" (rec'd Sept. 2, 2004) (FOIA Control No. 2004-577).

<sup>2</sup> It is well established that the FOIA does not require agencies to answer questions as opposed to producing records. *E.g.*, DiViao v. Kelley, 571 F.2d 538, 542 (10th Cir. 1978); Hudgins v. IRS, 620 F. Supp. 19, 21 (D.D.C. 1985); Prof Bill Neill, *Memorandum Opinion and Order*, FOIA Control No. 2003-483, FCC 03-293 (Nov. 18, 2003), at ¶ 5.

<sup>3</sup> Letter from Lisa Griffin, Deputy Division Chief, Market Disputes Resolution Division, EB to David Walker, President, Direct Dial Audio (Sept. 30, 2004), enclosing a copy of Direct Dial Audio Corp. v. Verizon Communications, Inc. and SBC Communications, Inc., 17 FCC Rcd 24873 (2002) (Direct Dial Complaint Order) (finding that Direct Dial pleadings complied neither with time limits for filing applications for review nor with rules applicable to formal complaints).

<sup>4</sup> FOIA Control No. 2004-577 Application for Review (rec'd Nov. 1, 2004).

<sup>5</sup> 5 U.S.C. § 552; 47 C.F.R. §§ 0.441-0.470.

<sup>6</sup> Application for Review at 4.

by EB and the former Consumer Information Bureau (CIB).<sup>7</sup> Direct Dial did not file a formal complaint after CIB closed the file on its informal complaint, nor did it seek review by the Commission when EB dismissed its complaint in a published decision. An application for review of a FOIA response, filed almost two years after Direct Dial's complaint on the merits was dismissed and the proceeding terminated, cannot revive Direct Dial's allegations in that underlying proceeding and is not the appropriate vehicle for seeking substantive relief.<sup>8</sup>

4. IT IS ORDERED that Direct Dial Audio Corporation's application for review is DENIED. Direct Dial may seek judicial review of this action pursuant to 5 U.S.C. § 552(a)(4)(b).

5. The officials responsible for this action are the following Commissioners: Chairman Martin, Commissioners Abernathy, Copps, and Adelstein.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>7</sup> Direct Dial Complaint Order, *supra* n.3; Letter from Thomas D. Wyatt, Associate Chief, CIB, to David Walker, Direct Dial, Direct Dial Audio Corp. v. SBC, et al., IC-01-N50387 (Mar. 21, 2002) (notifying Direct Dial that its informal complaint was closed after response from the carriers).

<sup>8</sup> EB previously urged Direct Dial not to submit frivolous pleadings to the Commission. Direct Dial Complaint Order, at 2 n.11, *citing* 47 C.F.R. § 1.52 and Public Notice, 11 FCC Rcd 3030 (1996). EB also noted that the United States District Court for the Western District of Michigan earlier found Direct Dial's filings related to the matters raised here to be so frivolous as to violate Fed. R. Civ. P. 11. *See* Direct Dial Complaint Order, at 2.